Supreme Court, U.S.
FILED

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No.

In the
SUPREME COURT of the UNITED STATES

October Term 1994

UNITED STATES OF AMERICA ex. rel.
THADDEUS PUDLO, Petitioner

v.

MICHAEL SHEAHAN,
Sheriff of Cook County, Illinois, Respondent

On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Seventh Circuit

Petitioner in his proper person
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Chicago, Illinois 60622
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36 pp

## QUESTIONS PRESENTED

1. Whether the petitioner can rely on this Court's holdings in Camara v. Municipal Court and See v. Seattle, 387 U.S. 523, 541, that one cannot be punished for refusing a warrantless municipal inspection, without running an undue risk of summary, indefinite incarceration by the Circuit Court of Cook County, Illinois in direct contradiction of those very decisions.

2. Whether the concern of Camara and See to restrain the "unbridled discretion" of city inspectors in the field must be urgently reapplied to the even more unbridled discretion of a Housing Court judge to throw the petitioner in Cook County jail for seeking to consult his regular attorney before consenting to a warrantless search, requested by the City of Chicago at an initial hearing without prior notification.

3. Whether the petitioner can rely on this Court to remove a "chilling effect" on the exercise in state court of Constitutional rights under the 4th, 6th and 14th Amendments, a chilling effect prohibited by this Court's holdings in Dombrowski v. Pfister, 380 U.S. 481.

4. Whether the petitioner is entitled to an immediate federal writ of habeas corpus, without exhausting state remedies, due to his capricious, summary Incarceration for retaining his constitutional rights. Whether, in other words, when the "key to the cell" is waiver of a constitutional right, if that is a circumstance of such "peculiar urgency" as to create an exception to the general rule requiring exhaustion of state remedies.

5. Whether the petitioner can be reasonably expected to litigate from jail constitutional issues in state court, i.e., to exhaust state remedies, as contemplated in Rose v. Lundy, 455 U.S. 509, cited by the 7th Circuit U.S.C.A. in denying his application for a certificate of probable cause, or when the trial judge had previously written, *"the State ... could delay her efforts months, or even years, by forcing Ms. Falconer to battle her way through the state court system. To permit the State gratuitously to stall Ms. Falconer's petition would frustrate the policies underlying the habeas corpus statute."* U.S. ex.rel. Falconer v. Lane, 720 F. Supp. 631, 640

6. Whether the petitioner can likewise rely on this Court's holdings in Hensley v. Municipal Court of San Jose Milpitas J.D., Cal., 411 U.S. 349, Harris v. Nelson, 394 U.S. 286, and Brown v. Allen, 344 U.S. 443, plus Burkett v. Cunningham, 826 F.2d 516, requiring swift, expeditious, non-technical, policy oriented disposition of habeas corpus matters; conversely, whether two years of gratuitous delay, expense and vexation amount to a denial of due process and an effective but still unconstitutional suspension of the writ of habeas corpus.

7. Whether the exhaustion doctrine can be used as a "blunderbus" to shatter the attempt at litigation of constitutional claims without regard to the purposes that underlie the doctrine, contrary to Braden v. 30th Judicial Circuit Court of Kentucky, 410 U.S. 484, 491.

8. Whether that "blunderbus" satisfies theexhaustion requirement.

9. Whether the exhaustion requirement can be perverted to protect disorderly court proceedings, state and federal, if no answer is ever given to petitioner's claim of an exception to the general rule of exhaustion.

10. Whether federal intervention rather than abstention is required in this instance to effect the policy changes sought by Rose v. Lundy, *supra.*

11. Whether the petitioner has any adequate remedy in Illinois courts.

12. Whether, for that matter, the petitioner has any adequate, effective, realistically available remedy in federal court.

13. Whether the petitioner has been subjected to an act of judicial violence by state courts, with federal courts to date playing Pontius Pilate and even threatening judicial violence of their own.

14. Whether the basic, paramount duty of the federal courts to protect the free exercise of constitutional rights takes precedence over any policy of comity with state courts regarding exhaustion of state remedies.

15. Whether a federal court system that only asks, to date, "What hoops have you jumped through?" and only says, "You and them fight," when desperately implored for judicial protection, is worthy of the name.

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**Petition for a Writ of Certiorari**
**to the United States**
**Court of Appeals for the Seventh Circuit**

THADDEUS PUDLO respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit in this case.

## OPINIONS BELOW

The orders of the court of appeals are attached as Appendices "A" through "D", and those of the district court as Appendices "E" and "F".

## JURISDICTION

The court of appeals denied an application for a certificate of probable cause on February 23, 1994 and denied a petition for rehearing on April 22, 1994. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1) and 28 U.S.C. 2254(a)

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Art. I, Sec. 9, Cl. 2 of the United States

Constitution provides: *"The Privilege of the Writ of Habeas Corpus shall not be suspended unless when in Cases of Rebellion or Invasion the public Safety may require it."*

The Fourth Amendment provides: *"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but on probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."*

The Sixth Amendment provides, in pertinent part: *"In all criminal prosecutions, the accused shall enjoy the right... to have the Assistance of Counsel for his defense."*

The Fourteenth Amendment provides, in pertinent part: *"...No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law..."*

28 U.S.C. 2254(b) provides: *"An application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that the applicant has exhausted the remedies available in the courts of the State, or that there is either an absence of available State corrective process or the existence of circumstances rendering such process ineffective to protect the rights of the prisoner."*

## STATEMENT OF THE CASE

1. The petitioner was imprisoned on January 17, 1992 by the Circuit Court of Cook County. He had appeared in Housing Court get a continuance, eventually to contest personal jurisdiction and suppress evidence seized in an illegal raid. He brought with him a long history of conflict with city

inspectors, including that raid, an ostensible inspection the previous spring conducted like a criminal search (with a flimsy misdemeanor charge subsequently filed, on which he was acquitted), and a similar incident a decade earlier. He was also long aware of two U.S. Supreme Court decisions *(infra)* requiring warrants before city inspections must be allowed and was determined not to waive any constitutional rights. He was not represented by his regular attorney, Dennis Doherty (205 W. Wacker, Chicago, 312-580-0935) but a stand-in was present for the limited purpose of getting the continuance. After a hearing was scheduled for the following month, the City attorney stated there was business that could be handled immediately, that the City wanted to arrange for another inspection. The judge told the petitioner to say when an inspection could be made. The petitioner, not being particularly adept at arguing law, said he wished to talk to his regular attorney first. About what, the judge asked. Jurisdiction, he replied, and the judge ordered him held in contempt. On January 29, 1992, after 12 days confinement, Doherty obtained his release on $100 cash bond.

2. On January 28, 1992, after various hassles with the office of prisoner correspondence and jail communication, the petitioner's friend, William F. Wendt, Jr., finally filed a federal petition for a writ of habeas corpus (under 28 U.S.C. 2254). After setting out the facts of the matter, the petition cited two decisions, Camara v. Municipal Court, 387 U.S. 523, and See v. Seattle, 387 U.S. 541, holding that warrants may be required before inspections must be allowed and that it is unconstitutional to punish anyone for refusing a warrantless inspection. The petition cited other cases, notably U.S. v. Goodwin, 457 U.S. 371, applying a presumption of vindictiveness when detrimental action is taken upon the exercise of a legal right. The petition argued that such proceedings cannot be accorded the presumption of regularity that would justify exhaustion of other remedies and that the vindictiveness in question was

an ongoing assault on the petitioner's exercise of constitutional rights. To require exhaustion of other remedies requires martyrdom of the petitioner in the meantime.

3. On February 7, 1992 the petition was summarily dismissed on grounds that state remedies were not exhausted. Although mention was made of petitioner's refusal to allow an inspection and the state court order directing his incarceration until he allows one, there was no mention made of either the constitutional issues involved or the argument that exhaustion is not required under these circumstances.

4. On February 18, 1992 the petitioner filed a six page motion to alter or amend, substantially reproduced in the first argument, IN GENERAL, p6.

5. Toward the end of April the petitioner was served with a demand by the City of Chicago to allow an inspection under discovery rules or be held in default. He filed an emergency pleading in the habeas corpus case to the effect that this was additional evidence of punitive intent for maintaining a constitutional position. After a somewhat tumultuous hearing on May 4, 1992, the motion was denied, the judge sidestepping arguments and saying the next stop was the 7th Circuit (U. S. Court of Appeals). What seemed to the petitioner and his friend an overwhelmingly final order, however, was only docketed as denial of an emergency oral motion.

6. An appeal was timely filed, No. 92-2330 (under 28 U.S.C. 1291), in the 7th Circuit Court of Appeals, with a motion filed in the trial court for correction of the order. The 7th Circuit questioned the finality of the trial court order and halted the briefing schedule. After some months of confusion, the appeal was dismissed for lack of a final order. In a petition for rehearing, the petitioner insisted on the finality of the order and strenuously objected to embroiling a habeas corpus matter in such a technical matter. The petition was denied in February 1993.

7. After weeks of waiting for the trial court to find the file, on June 1, 1993 the petitioner appeared to obtain a final order in this matter. Extra notice

notwithstanding, the file was still not present in the court, for which the judge seemed to blame the petitioner. The State's Attorney handed the judge a copy of the motion (which seemed authentic from a distance, not having been shown to the petitioner first). The judge was only interested in the name of the Cook County judge in question. He looked at the motion briefly and denied it. At least he said the order was final. The petitioner's friend said the judge had not even heard the argument. The judge told him to leave or be held in contempt. He subsequently denied a certificate of probable cause for lack of "debatable questions deserving appellate review," citing Lozada v. Deeds, 111 S.Ct. 860, 861-862,

8. Another appeal was filed, No. 93-3079 (again under 28 U.S.C. 1291), and an application for a certificate of probable cause was filed on August 20,1993. It sought to argue that

a) the petitioner was entitled to a federal writ of habeas corpus to protect his constitutional rights under the 4th, 6th and 14th Amendments,

b) he was entitled to immediate relief in this assault on his free exercise of constitutional rights, without exhausting state remedies,

c) he had no adequate remedy under state law to vindicate his constitutional rights,

d) the requirement of exhaustion does not apply when the state court(s) is (are) arguably functioning in a disorderly or vindictive manner,

e) he is entitled to an orderly court in any event, at least to some preliminary inquiry as to whether the state court is orderly,

f) he was denied due process and only given half a day in court,

g) emergency federal habeas corpus procedures, or rather the lack of them, leave much to be desired.

It was denied on February 23, 1994, the 7th Circuit only citing Rose v. Lundy, 455 U.S. 509, a multi-claim case holding that a claimant cannot seek federal relief until he exhausts all his claims in state court..

9. A petition for rehearing was filed, with

suggestion for rehearing en banc and a review of the entire two year history of the litigation, arguing as substantially reproduced under INADEQUATE FEDERAL RESPONSE, p13. It was denied again without explanation on April 22, 1994.

10. At this juncture the petitioner's state case is still on appeal. His brief has been filed, notwithstanding a separate action to have a court reporter produce all the transcripts in question. The City is still seeking extensions of time to file its brief, as petitioner best understands this chaotic situation.

11. Petitioner is aware of at least one party who was incarcerated under circumstances similar to his, but who capitulated after one day and allowed the inspection.

## REASONS FOR GRANTING THE PETITION

IN GENERAL

1. The petitioner still released on a $100 cash bond, federal jurisdiction is retained under Leonard v. Hammond, 804 F.2d 838, 842, a case cited in the original dismissal.

2. Petitioner could easily be reincarcerated, however, by the same judge who incarcerated him in the first place. Thus this case is not moot under the *"capable of repitition, yet evading review"* exception enunciated in Leonard, 804 F.2d at 842-843.

3. Petitioner is thus also still in custody under the terms of Hensley v. Municipal Court of San Jose Milpitas J.D., Cal., 411 U.S. 349.

4. 28 U.S.C. 2254 does not require exhaustion of state remedies where those are inadequate or under unusual circumstances.

5. The requirement of exhaustion of state remedies is not a hard and fast rule, but rather a policy of comity between state and federal courts, a concession of federal power to the orderly functioning of state courts. Itsfirst principle is the federal power to grant the writ without exhaustion*"due to the federal judiciary's basic purpose and duty of protecting and vindicating*

*federal constitutional rights."* The second principle is allowing state courts the first opportunity to vindicate those rights, to avoid unnecessary tension between the two systems and to allow orderly functioning of state systems. Carter v. Estelle, 677 F.2d 427, 441-443.

6. The summary dismissal cited two Illinois appeals of contempt citations, Bone v. Bone, 43 Ill. App. 3d 363, 356 N.E.2d 1348, and In re Marriage of Betts, 200 Ill. App. 3d 25, 558 N.E.2d 404. The first was premature, in that no sanction had been imposed. In the second, a contempt citation of June 2, 1989 was finally overturned on June 28, 1990, over a year later. That decision says at 558 N.E.2d 424-425:

*"...No jail sentence for indirect civil contempt will exceed six months unless the respondent, through his continued recalcitrance, makes it exceed six months. Prior to the expiration of a six month period of incarceration, an indirect civil contemnor has ample opportunity either to comply with the court order in question or explain why he or she cannot comply with it... Because of the contemnor's unique ability to control the imposition of sanctions in indirect civil contempt cases, the constitutional guarantee of a jury trial for criminal contempts when the penalty exceeds six months is wholly inapplicable to indirect civil contempt proceedings."*

7. Based upon that lengthy decision, petitioner may well have several grounds for a successful appeal in state courts. It has already taken over two years, however, and the first appeal has yet to be decided. In setting criteria for habeas corpus, which presumably applies to state remedies as well, Hensley held at 343 U.S. 349-350:

*"...Our recent decisions have reasoned from the premise that habeas corpus is not 'a static, narrow, formalistic remedy,' (cite), but one which must retain the 'ability to cut through barriers of form and procedural mazes.' (cite) 'The very nature of the writ demands that it be administered with the initiative and flexibility essential to insure that miscarriages of justice within its reach are surfaced and corrected.' (cite)*

*"Thus we have consistently rejected interpretations of the habeas corpus statute that would suffocate the writ in stifling formalisms or hobble its effectiveness with the manacles of arcane and scholastic procedural requirements. The demand for speed, flexibility and simplicity is clearly evident in our decisions concerning the exhaustion doctrine." (seven cites)*

Two year's wait for a successful, or even completed, appeal is certainly no adequate remedy under these criteria.

8. Commenting on three other Illinois remedies in a post conviction matter, U.S. ex. rel. Bachman v. Hardy, 637 F. Supp. 1273, 1278, held that they were all *"ineffective to protect Bachman's constitutional rights and his failure to exhaust these remedies is excused."* "These statutory remedies are still apparently unchanged since that 1986 decision.

9. Betts, however, also describes civil contempt at 558 N.E.2d 416:

*"Civil contempt proceedings have two fundamental attributes: 1) The contemnor must be capable of taking the action sought to be coerced, and 2) no further contempt sanctions are imposed upon the contemnor's compliance with the court order. (cites) In other words, the contemnor must have an opportunity to purge himself of contempt by complying with the pertinent court order. If the contempt sanction is incarceration, the respondent's circumstances should be such that hemay correctly be viewed as possessing the 'keys to his cell.' (cite)"*

10. While the order of dismissal begins,

*"Thaddeus Pudlo is in the Cook County Jail because he refused to comply with a state court order to permit city inspectors to inspect the interior of a certain piece of property he owned. The court entered an order of civil contempt against Pudlo directing his incarceration in the Cook County Jail until such time as he should purge himself of contempt by arranging for an inspection,"*

two other cases cited in the petition, Camara v. Municipal Court and See v. Seattle, 387 U.S. 523,

541, both hold, with certain exceptions, not only that a warrant may be required by the possessor of the residential or business premises before inspection, but that it is unconstitutional for anyone to be punished for refusing an inspection without a warrant. Thus the petitioner found himself unable to comply with the court order in question for fear of waiving rights under the 4th, 6th and 14th Amendments.

11. Unanswered by the dismissal (or any other court order to date) is the patent unconstitutionality of punishment for exercising constitutional rights or of being coerced into waiving them. U.S. v. Goodwin, 457 U.S. 371, 372; Sherar v. Cullen, 481 F.2d 945; Dunn v. Blumstein, 405 U.S. 339, 341. *"The claim and exercise of a constitutional right cannot thus be converted into a crime."* Miller v. United States, 230 F.2d 486, 490. The *"keys to the cell"* can never be waiver of constitutional rights.

12. *"(I)t is the legal issues that are to be exhausted, not the petitioner."* (cites) Burkett v. Cunningham, 826 F.2d 1208, 1218; also see Johnson v. Hall, 465 F. Supp. 516, 523. Likewise, to be sure, neither to be exhausted is the free exercise of constitutional rights by the petitioner, as in this apparent case of first impression.

13. Fearing the *"chilling effect"* of possible state criminal prosecutions under an overbroad state statute upon First Amendment rights, Dombrowski v. Pfister, 380 U.S. 481, 487, 494, granted injunctive and declaratory relief. Petitioner likewise feels a "chilling effect" on his exercise of constitutional rights in the Circuit Court of Cook County because of the arbitrary, capricious, drumhead manner in which he was incarcerated and likewise seeks similar relief, in effect.

14. Indeed that same "chilling effect" militates against requiring petitioner to seek further state remedies, at least without at least some provisional federal protection.

15. It is the purpose of any punishment to "send a message." If the petitioner's punishment is not

repudiated on federal constitutional grounds, as apparently only a federal court is at all likely to do in the near future, the "message" will be: *"Don't exercise constitutional rights in the Circuit Court of Cook County."* Petitioner's "contumnacious" conduct was nothing more than a statement that he wanted to talk with his regular attorney, who was not present at the time. The right to counsel in contempt proceedings is specifically recognized in Ridgway v. Baker, 720 F.2d 1409, 1413, the last of the four cases cited in the dismissal.

16. As noted above, the exhaustion requirement is to protect the orderly functioning of state courts from unnecessary federal intervention. Incarcerating anyone under the circumstances of this particular case hardly qualifies as an orderly proceeding. Indeed, Betts, in concluding, dicsusses disorderly proceedings in the Illinois trial court, indicating a more general problem. As stated in the petition and unanswered in the dismissal (or, likewise, any other court order to date), in any event,

*"U.S. v. Goodwin, 457 U.S. at 374, holds that the Court will apply a presumption of vindictiveness in cases in which action detrimental to a defendant has been taken after the exercise of a legal right. In other words, such proceedings cannot be accorded the presumption of regularity which would justify the requirement of exhaustion of other remedies. The vindictiveness in the present matter is a continual, ongoing assault on petitioner's exercise of constitutional rights. To require exhaustion of other remedies requires martyrdom of the petitioner in the meantime. These circumstances demand an immediate release and such declaratory and injunctive relief as to prevent a recurrence."*

17. In this particular instance, however, it would seem that the orderly functioning of the Illinois courts would be better served by federal intervention unmistakably establishing the federal issues. This certainly would not be the first time that Illinois courts have required federal intervention to vindicate constitutional rights or combat corruption.

INADEQUATE STATE REMEDIES

18. As noted above, the exhaustion requirement is not an absolute rule, its application in this matter to date notwithstanding, but a policy of accomodation to state courts. That is, if there is something to be accomodated. Hankins v. Fulcomer, 941 F.2d 246, 249- 250 held:

*"Although the requirement of exhaustion and its underlying principles form a threshold test to federal claims for habeas relief, they are designed as an 'accomodation' rather than an 'insuperable barrier.' (cite) The statutory exceptions under Section 2254(b) ensure that the exhaustion requirement is not a 'mechanical formula' limiting federal jurisdiction. (cites) If it appears that the prisoner's rights have become an 'empty shell' or that the state process is a 'procedural morass' offering no hope of relief, then the federal courts may excuse the prisoner from exhausting state remedies and may directly consider the prisoner's constitutional claims. (cites)*

*"Inordinate delay in state procedures is one circumstance that can render state process ineffective to protect a prisoner's rights and therefore excuse exhaustion." (cite)*

19. Illinois remedies were called a "merry-go-round" in the famous concurring opinion to Marino v. Ragen, 332 U.S. 561, *"sufficiently confusing that an Illinois prisoner '[could] not intelligently select the proper way [to obtain review].'"* Harmon v. Ryan, 959 F. 2d 1457, 1462. The Illinois Post-Conviction Hearing Act was rewritten as a result of that decision, People v. Correa, 485 N.E. 2d 307, 108 Ill, 2d 541, 546, People v. Joseph, 495 N.E. 2d 501, 113 Ill. 2d 36, 44, People v. Wilson, 499 N.E. 2d 972, 975, 146 Ill.App.3d 567. Problems remain, however. A dissent to People v. Polk, 521 N.E. 2d 1158, 1170, 122 Ill. 2d 64, said the statute has been transformed into a ride to nowhere for indigent petitioners. That only applies to those already convicted, not to those held in contempt.

20. *"Even if the petitioner could theoretically have complied with state procedures, the fact that he could not reasonably have been expected to is sufficient to excuse noncompliance."* Harmon at 1462. The key issue is the practical realities of litigating in Illinois. The petitioner's regular attorney in an experienced, able criminal practitioner, whose choice of state remedies, frustrating as they have been to date, petitioner has no intention of second-guessing. The practical realities of litigating unjust imprisonment in Illinois were explained by none other than the federal trial judge in this matter, Brian Barnett Duff:

*"....Of paramount importance is Ms. Falconer's interest in 'obtaining speedy federal federal relief on [her] claim,' Rose, 455 U.S. at 520..., an interest reflected in the Seventh Circuit's rule regarding the need for direct precedent before sending a petitioner back to state court. The State's about-face had but a single purpose, and a single effect: to impair that interest. The State must have known it could not prevent Ms. Falconer from eventually obtaining a federal court ruling on her claim, but it calculated that it could delay her efforts months, or even years, by forcing Ms. Falconer to battle her way through the state court system. To permit the State gratuitously to stall Ms. Falconer's petition would frustrate the policies underlying the habeas corpus statute. Cf. Marino v. Ragen, 332 U.S. 561, 564,"* in U.S. ex.rel. Falconer v. Lane, 720 F. Supp. 631, 640 (1989)

21. The City of Chicago Commissioner of Health was held in contempt in the Circuit Court of Cook County about a year after the petitioner was. How did the petitioner's original adversary try to spring one of its own? Illinois habeas corpus procedures? A regular or even expedited appeal? Ha! The City filed in the Supreme Court of Illinois for an extraordinary and highly discretionary writ of prohibition! (Nos. 75366 and 75533) Whatever might be theoretically available under Illinois law, that alone leaves rather little else that need be said about the real availability of relief from unjust imprisonment in Illinois, such as it is.

22. There seems to be an incomprehension in the local political and legal culture that this Court's holdings in Camara and See, *supra*, actually require a warrant, not a mere court order. One former Cook County judge was quite oblivious to the constitutional dimensions of the petitioner's situation and took the Housing Court order to be completely normal and unobjectionable, as can be seen in his summary dismissal of the original federal petition in this matter.

23. Two Illinois decisions offer insight into the realities of litigating in Illinois, regardless of issue. People v. Williams, 87 Ill.2d 161, had to rule that trial courts have no inherent authority to order discovery of defendents in nonfelony cases. Further, that a decision some years earlier, People v. Schmidt, 56 Ill.2d 572, only allowed discovery for the defense in misdemeanor cases, that the prosecution could not read in any reciprocal authority for itself. (Little good that did the petitioner, who was served with a discovery demand in a misdemeanor case arising from the illegal inspection in question.) In re Corboy, 124 Ill.2d 24, noted that it was considered all right among the Illinois bar for lawyers to make loans to judges. They read things into decisions, or read them out, or just make up the rules as they go along. Petitioner's unhappy contacts with Illinois justice over the years dispose him to take keen note of such informal cultural manifestations and further dispose him not to expect anything more than endless frustration from it. Not, however, as it turns out, that the local federal bench is immune to such influences or that it has been noticeably superior, below.

## INADEQUATE FEDERAL RESPONSE

24. If a witness on the stand refuses to answer a question he may easily be held in contempt as nonresponsive. It could conceivably happen in as little as two minutes. After all, the petitioner complains here of a contempt citation that takes less than a page in the transcript. As the federal courts have yet to examine that transcript in over two years of

litigation, he has to wonder, however, what happens when the courts are nonresponsive to a question put to them. What happens when nonresponsive judges present a greater danger to the court process? In any event, this wretched record is quite contrary not only to Hensley, *supra*, but to the injunction of Harris v. Nelson, 394 U.S. 286, 292:

*"There is no higher duty of a court, under our constitutional system, than the careful processing and adjudication of petitions for writs of habeas corpus, for it is in such proceedings that a person in custody charges that error, neglect, or evil purpose has resulted in his unlawful confinement and that he is deprived of his freedom contrary to law..."*

25. In over two years of so far futile litigation the petitioner has NEVER claimed to have exhausted state remedies. He has rather been trying to tell federal trial and appellate courts, in every substantive pleading filed before them, that his situation presents an EXCEPTION to the general rule that state prisoners must exhaust state remedies before petitioning federal courts for habeas corpus relief.

26. For over two years these federal courts have yet to even mention the petitioner's argument that his case presents an exception to the general rule, much less tell him why it is not.

27. For over two years these same federal courts have treated this general rule as an absolute rule, admitting of no exception, even though it evolved as a general rule in the courts, was explicitly codified by Congress as a general rule, explicitly admitting of possible exceptions, and has been discussed in various federal decisions as such, *infra*.

28. After over two years he is still waiting, and not altogether patiently, for something, anything, in this matter, from the federal courts, that responds to this question of being excepted from the general rule. He is also waiting for anything that bears any minimal resemblance to the ORDERLY functioning of courts on any level that this general rule is supposed to protect, for whose protection he might be expected to sit an interminable time in confinement, while

refusing to waive one of the constitutional rights he thought he was fighting for in Korea.

29. After over two years of this broken record in the federal courts, and after sitting on the petitioner's APPLICATION FOR A CERTIFICATE OF PROBABLE CAUSE for six months, the 7th Circuit U.S.C.A cited a Supreme Court case, Rose v. Lundy, 455 U.S. 509, to the effect that petitoner cannot seek federal relief until he exhausts ALL his claims in state court. Judging by the order, this Court only read thispassage of the decision:

*"A rigorously enforced total exhaustion rule will encourage state prisoners to seek full relief first from state courts....,"* 455 U.S. at 518

30. This case made new law for a convicted prisoner presenting multiple claims in a complex appellate matter, as opposed to this petitioner being cited for contempt in an all too simple proceeding for refusing to waive a constitutional right. Of all the decisions on habeas corpus, whose headnotes alone fill dozens of pages in the federal digests, why this case should be considered governing here or why the petitioner should give something as apparently far removed from his circumstances a second glance, ought to be explained by that court, at the very least as an exercise in the civility it advocates.

31. In previously reviewing the history of the exhaustion requirement, however, Rose also notes there are EXCEPTIONS to the general rule, which is NOT intended to interfere with a full and fair adjudication of claims, as it has here, citing Ex parte Hawk, 321 U.S. 114, 117:

*"it is a principle controlling all habeas corpus petitions to the federal courts, that those courts will interfere with the administration of justice in the state courts only 'in rare cases where exceptional circumstances of peculiar urgency are shown to exist.'"* 455 U.S. at 515-516, with footnote:

*"The Court also made clear, however, that the exhaustion doctrine does not bar relief where the state remedies are inadequate or fail to 'afford a full and fair adjudication of the federal contentions raised.'"*

321 U.S. at 118, 455 U.S. at 516

32. The habeas corpus statute not referring to the problem at hand, Rose analyzed underlying policy matters to determine its proper scope. The petitioner has been trying to argue policy matters from the very start of this litigation, and without the slightest acknowledgement by the federal courts. From 455 U.S. at 517-518, in any event, citations omitted:

*"In expounding a statute, we must... look to the provisions of the whole law, and to its object and policy."*

*"where the statute's language seem(s) insufficiently precise, the 'natural way' to draw the line 'is in light of the statutory purpose.'"*

*"The axiom that courts should endeavor to give statutory language the meaning that nurtures the policies underlying legislation is one that guides us when circumstances not plainly covered by the underlying policies to which Congress was committed."*

*"Arguments of policy are relevant when for example a statute has an hiatus that must be filled or there are ambiguities in the legislative language that must be resolved."*

33. The policy underlying the exhaustion doctrine is briefly reviewed, with, however, reference to state court CONVICTIONS, not rump state court CONTEMPT CITATIONS attacking exercise of constitutional rights. As prisoners exhaust their state remedies, the decision anticipates, *"state courts may become increasingly familiar with and hospitable toward constitutional issues."* Furthermore, exhaustion of claims in state courts will present federal courts with more complete factual records.

34. As important as these reasons are, the petitioner still strenuously objects to their taking precedence over the effectual protection of his constitutional rights, over *"the federal judiciary's basic purpose and duty of protecting and vindicating federal constitutional rights.,"* Carter v. Estelle, *supra.*

35. And while the petitioner yields to no one in

wishing the state courts an increased familiarity with and hospitality toward constitutional issues, he still fails to see the necessity of his sitting in jail, or anticipating sitting in jail again, for an interminable period, waiting for them to develop those most auspicious qualities, with his constitutional rights protected only by his own tenacity. Actually he would expect the state courts to develop those qualities more quickly if properly embarrassed into them by the federal courts, although the federal court "merry-go-round" he has been on for two years needs the same embarrassment. Federal intervention has been required innumerable times to make Illinois justice function in anything like an orderly manner. And, quite unlike long controverted convictions, there is no factual record necessary here beyond two pages of transcript.

36. The petitioner would further like to know, what's to disrupt? He was released after 12 days, the day after the original petition was filed. The judge who incarcerated him simply gave up on coercing him, persuaded by his regular counsel, not as a matter of law but as a matter of grace, as happens all to often in what passes for a court system. There has been no actual incarceration since then, but the petitioner did anticipate that when presented with another, somewhat more formal demand for an inspection. An appeal of the entire case, not just the contempt citation, is in progress, but even at this late date, has yet to be fully briefed. A federal writ of habeas corpus, at this late date, would have no immediate consequence, except to compel return of $100 bond and remove the incarceration as an active issue of appeal. The petitioner wants the writ as insurance, per authorities cited above, against this happening again to himself or others subject to the roughhouse justice of the Circuit Court of Cook County Housing Court.

37. To be perfectly honest about it, the petitoner's intentions are quite disruptive. He wishes to disrupt, not the orderly functioning of a conscientious court or court system, but the disorderly, capricious, Alice-

in-Wonderland mayhem of something that does not deserve to be called a court or court system. This is not what the exhaustion rule was designed to protect, but that is exactly what the federal courts have been protecting in over two years of these proceedings, being themselves not especially more orderly. Petitioner finds it necessary to remind the judges of this and every other Court that they are sworn to protect his beleagured Constitutional rights instead, as their first and foremost duty. If they think they have any higher duty, he certainly would like to be informed what it is.

38. A dissent to Rose v. Lundy says in part, 455 U.S. at 546, 547-548,

*"In recent years federal judges at times have lost sight of the true office of the great writ of habeas corpus."*

*"...The availability of habeas corpus relief should depend primarily on the character of the alleged constitutional violation and not on the procedural history underlying the claim,"* a lengthy footnote concluding:

*"Its history and function in our legal system and the unavailability of the writ in totalitarian societies are naturally enough regarded as one of the decisively differentiating factors between our democracy and totalitarian governments."* Brown v. Allen, 344 U.S. 443, 512

39. The two years of pettifogging, straight-arming and stonewalling the petitioner has gotten from the federal courts so far amount to little less than an unconstitutional suspension of the writ of habeas corpus as regards him. It is likewise the loss of an important distinction with totalitarianism, a budding, informal form of which he has already personally experienced and which continues to haunt him.

40. For over two years the petitioner has been trying to tell the federal courts that this matter is one of peculiar urgency. His rump incarceration was nothing less than an attack on an exercise of a constitutional right. He needed IMMEDIATE court protection from that, the same way the victim of a

criminal attack needs intervention from a policeman. He claimed that IMMEDIATE intervention with considerable citation of habeas corpus law, but which has been studiously ignored by the federal courts to date. That is also a denial of due process which is up to the courts to correct, not him. If that does not make this matter one of "peculiar urgency" warranting waiver of the exhaustion rule, then, pray tell, what does? *"The exhaustion doctrine... cannot be used as a blunderbus to shatter the attempt at litigation of constitutional claims without regard to the purposes that underlie the doctrine and called it into existence,"* Braden v. 30th Judicial Circuit Court of Kentucky, 410 U.S. 484, 491, but apparently the 7th Circuit needs to be informed of this.

41. One more or less fortuitous conjunction between slow litigation and policy arguments is that the passage of time allows for commentary on relevant current affairs. About the time the latest dismissal was issued, the Chicago Council of Lawyers released a 126 page evaluation of the 7th Circuit, whose occasionally severe criticisms the petitioner can only echo, or, given the two year history of this litigation, it is the other way around. The Council criticized the 7th Circuit for, among other things,

a) considering legal theories and cases not in the record without consulting the parties (and likewise imposing sanctions),

b) excessive concern with jurisdictional, procedural and technical matters at the expense of resolving cases on the merits,

c) delays in releasing decisions, and

d) incivility,

with an overall effect of reducing the respect for the 7th Circuit's decisions. In particular, it is hard to see how the 7th Circuit's dismissal of the previous appeal for lack of a final order increased respect for anything. Petitioner's argument that the order was final in everything but form was borne out by the trial court's perfunctory, irascible granting of the final order, even threatening more judicial violence when reminded that it had not even heard the

argument. This wasted a year and $105 court costs on totally, utterly pointless litigation (except that it might expose underlying problems in the federal courts), objectionable in any case but especially so in a habeas corpus matter.

42. Standards for professional conduct issued by the 7th Circuit are explicitly titled, "Courts' Duties to Lawyers," but, if the petitioner is not unduly impertinent, he might consider them applicable to *pro se* litigants as well. These are, in any event, far from fulfillment in this matter:

*"5. We will make all reasonable efforts to decide promptly all matters presented to us for decision."*

*"6. We will give the issues in controversy deliberate, impartial, and studied analysis and consideration."*

*"11. We will not adopt procedures that needlessly increase litigation expense."*

43. The 7th Circuit Court of Appeals was severely criticized in Will v. U.S., 389 U.S. at 104-107, for issuing a writ of mandamus without explanation. Those pages make a number of criticisms most appropriate here, including,

*"Even more important in our view, however, than these deficiencies in the record is the failure of the Court of Appeals to attempt to supply any reasoned justification of its action...*

*"Due regard, not merely for the reviewing functions of this Court, but for the 'drastic and extraordinary' nature of the mandamus remedy (cite), and for the extremely awkward postion in which it places the District Judge... demands that a court issuing the writ give a reasoned exposition of the basis of its action."*

*"... A mandamus from the blue without rationale is tantamount to an abdication of the very expository and supervisory functions of an appellate court..."*

*"...What might be the proper decision upon a more complete record, supplemented by the findings and conclusions of the Court of Appeals, we cannot and do not say. Hence the writ is vacated and the cause*

*remanded to the Court of Appeals for the Seventh Circuit for further proceedings..."*

## UNNECESSARY AND POINTLESS DISMISSAL OF FIRST APPEAL

44. This dismissal is not itself under appeal in this matter, but it was a major part of its history and a fit subject for this Court's criticism. Given the constant complaints about unnecessary litigation and overcrowded court dockets, the 7th Circuit's handling of this question raises questions of judicial economy and prudence, especially when 1) it confused and disrupted the petitioner in securing the final order under a different understanding, 2) the trial court added nothing to discussion of the merits in issuing the final order, and 3) the 7th Circuit disposed of the second appeal on another threshold question that should have been obvious in the first. The petitioner summarized as follows his petition for rehearing of the dismissal of his first appeal for lack of finality:

*"A. The dismissal is unexplained*

*"B. The order expresses no remand or further disposition of the case.*

*"C. Although the inquiry underlying finality of the lower court order is in a difficult, highly technical area, petitioner still had excellent reason to consider the lower court order final or at least in need of appellate court remediation.*

*"D. Other cases, including cases in this Circuit, have handled the inquiry into finality and other topics in habeas corpus cases with considerably greater initiative, expedition, explantation and instruction than has been done here, whether or not holding the trial court order final.*

*"E. As also outlined in appellant's last filing, such an inquiry places an unreasonable burden on a petitioner for a writ of habeas corpus.*

*"F. In this whole habeas corpus litigation, now over a year old, there has yet to be any proper response to or even inquiry into the essential points of*

*the appellant's case.*

*"G. The handling of this matter by the federal apparatus to date, begining with off-the-record transactions by petitioner's friends with the Office of Prisoner Correspondence, amounts to an unconstitutional suspension of the writ of habeas corpus."*

45. Among the authorities cited in supporting the petitioner's position were 36 C.J.S. 829, Federal Courts #290(4), R.F.C. v. Service Pipeline Co., C.A. Okl., 206 F.2d 814, 816", Sisquoc Ranch v. Roth, 153 F.2d 437, U.S. ex. rel. Stachulak v. Coughlin, 520 F.2d 931 (7th Circuit), Charles v. Daley, 799 F.2d 343, 347, FTC v. Minneapolis-Honeywell Co., 344 U.S. 206, 211., Heirens v. Mizell, 729 F.2d 449, 457 (7th Circuit), Fryer v. MacDougall, 462 F.2d 1093, Stewart v. Reto, 454 F.2d 269, Baity v. Ciccone, 507 F.2d 717, 36 C.J.S. 1326 Federal Courts #301(5), Remand without Decision, Karstetter v. Cardwell, 399 F.Supp. 1298, Zimmerman v. Spears, 565 F.2d 310, and Dickerson (v. Louisiana?), 816 F.2d at 224, and Will v. U.S., 389 U.S. at 104-107

EXHAUSTION OVER EXTENDED TIME

46. *"The exhaustion requirement is satisfied if the state courts have not ruled on petitioner's properly presented claim for an inordinately long time."* 1 Liebman Federal Habeas Corpus Practice and Procedure, 52 § 5.3, citing Gibson v. Klevenhagen, 777 F.2d 1056, 1058, Cook v. Florida Parole and Probation Commission, 749 F.2d 678, Vail v. Estelle, 711 F.2d 630, 632, Pool v. Wyrick, 703 F.2d 1064, 1066-67, and several other federal appellate cases.

47. *"The exhaustion requirement is satisfied even if even if the prisoner's claim, though unexhausted when filed in federal court, becomes exhausted between the time he filed the petition and the federal court reached the merits of the claim."* 1 Liebman Federal Habeas Corpus Practice and Procedure, 52 § 5.3, citing Schwartzmiller v. Gardner, 752 F.2d 1341, 1345 and Thomas v. Wyrick, 687 F.2d 235, 237 n2, *cert.den.* 459 U.S. 1175.

QUESTIONS OF COURT CREDIBILITY

48. The whole idea of a court system in the first place is that people can settle their differences peacefully under some reasonable basis supplied by an impartial third party, instead of duking it out or shooting it out. What, then, is the point of a court system at all, when courts try to settle matters not by any reasoned explanation, but by actual or threatened use of simple, unreasoned, unexplained force, judicial trappings notwithstanding, as have both state and federal trial courts in this matter? What is the obligation of an appellate court when presented with trial judges, state and federal, who have, by their conduct toward the petitioner and his friend in this matter, relenquished the moral authority to tell two six year olds to stop duking it out and settle things peacefully?

49. Under feudalism even that presumably impartial third party might rule by force alone. Under representative government, however, the laws are at least theoretically made in the interest of the people, who obey them, not out of mere fear of retribution, but out of conviction that obedience is in their own best interest. In other words, the law functions primarily on a moral basis, a notion that upon occasion works its way into a court decision. One example is U.S. v. Sisson, 297 F. Supp. 902, 910-911:

*"When the state through its laws seeks to override reasonable moral commitments it makes a dangerously uncharacteristic choice. The law grows from deposits of morality. Law and morality are, in turn, debtors and creditors of each other. The law cannot be adequately enforced by the courts alone, or by courts supported merely by the police and the military. The true secret of legal might lies in the habits of conscientious men disciplining themselves to obey the law they respect without the necessity of judicial and administrative orders. When the law treats a reasonable, conscientious act as a crime it subverts its own power. It invites civil disobedience.*

*It impairs the very habits which nourish and preserve the law."*

50. So, when government becomes a lawbreaker, it invites every man to break the law himself, as Louis Brandeis wrote in his famous but all too often ignored dissent. Olmstead v. U.S., 277 U.S. 438, 485. When judges themselves resort to simple, unreasoned, unexplained force, judicial trappings notwithstanding, what happens to the moral force of the law? And when their brethren ignore it? Or, more to the point, what happens to the public? Burgeoning crime? Bulging prisons? The highest rate of imprisonment of any country in the world? Twice the rate of black imprisonment as even apartheid South Africa? Hmmm? A system of law depends on some general sense of mutual obligation to function effectively. If it is not to be found in the judiciary, of all places, it certainly can be expected to erode quickly elsewhere. And the judiciary certainly hasn't shown it to date in this matter.

51. Petitioner is heard to mutter every so often, with regard to his various legal frustrations, of which this is merely the latest, *"There are no courts."* Petitioner suggests this would be a very dangerous sentiment to become widespread among the population, but that such a sentiment might become just that, the more people are victimized the way he has been. In that regard, he can only suggest a reading of H. Bruce Lincoln's history of pre-revolutionary Russia, which records 1) a common peasant expectation of being protected by the Tsar, and 2) a common peasant cry about the time of the Russo-Japanese War of 1905 and its attendant abuses, *"There is no Tsar!*

## CONCLUSION

The petition for a writ of certiorari should be granted.

Thaddeus Pudlo, in his proper person
1651 Hubbard
Chicago, Illinois 60622
(312) 421-4862
by William F. Wendt, Jr., same address and phone

# United States Court of Appeals

*for the Seventh Circuit*
*Chicago, Illinois 60604*

April 22, 1994

*Before* Hon. Walter J. Cummings, *Circuit Judge*

Hon. Richard D. Cudahy, *Circuit Judge*

| | | |
|---|---|---|
| THADDEUS PUDLO,<br>Plaintiff-Appellant | ) | Appeal from the<br>United States<br>District Court |
| No. 93-3079 v. | ) | N.D. Ill., E.D.<br>No. 92 C 691 |
| MICHEAL SHEAHAN, Sheriff,<br>Defendant-Appellee | ) | Brian Barnett<br>Duff, Judge |

Upon consideration of the **"PETITION FOR REHEARING WITH SUGGESTION FOR REHEARING EN BANC**, filed 3/9/94 by counsel for the appellant,

The panel has voted to **DENY** the motion for reconsideration of the denial of a certificate of probable cause and no judge in regular active service has requested a vote on the Suggestion for Rehearing En Banc. Accordingly,

The Petition for Rehearing with Suggestion for Rehearing En Banc is **DENIED.**

# United States Court of Appeals

*for the Seventh Circuit*
*Chicago, Illinois 60604*

**Date: February 21, 1994**
**Submitted: February 18, 1994**
**BEFORE:** Hon. Walter J. Cummings, *Circuit Judge*
Hon. Richard D. Cudahy, *Circuit Judge*

No. 93-3079
THADDEUS PUDLO,
Plaintiff-Appellant
v.
MICHEAL SHEAHAN, Sheriff,
Defendant-Appellee

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division
No. 92 C 691, Brian Barnett Duff, Judge

Petitioner filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. Sec. 2254. The District Court dismissed the petition and declined to issue a certificate of probable cause.

Petitioner has now filed an application for a certificate of probable cause. This court has reviewed the final order of the district court and the record on appeal.

Petitioner has not demonstrated that his claims have been exhausted. Rose v. Lundy, 455 U.S. 509 (1982), requires dismissal of the petition if even one claim is unexhausted.

Accordingly, the request for a certificate of probable cause is **DENIED**.

# United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

March 3, 1993

By the Court:

| | | |
|---|---|---|
| THADDEUS PUDLO,<br>Plaintiff-Appellant | ) | Appeal from the<br>United States<br>District Court |
| No. 92-2330 v. | ) | N.D. Ill., E.D.<br>No. 92 C 691 |
| MICHEAL SHEAHAN, Sheriff,<br>Defendant-Appellee | ) | Brian Barnett<br>Duff, Judge |

This matter comes before the court on consideration of the **"PETITION FOR REHEARING WITH SUGGESTION FOR REHEARING EN BANC,"** filed herein on 2/17/9.

This Petition for Rehearing was circulated to all sitting judges in active service. No judge voted to hear this matter en banc. Accordingly,

**IT IS ORDERED** that the **PETITION FOR REHEARING EN BANC** is **DENIED.** Once petitioner obtains a definitive ruling on the Rule 59(e) motion that is still pending before the lower court, a final appealable judgment will exist and a notice of appeal may be filed at that time.

# United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

February 1, 1993

*Before* Hon. JOHN L. COFFEY, *Circuit Judge*
Hon. JOEL M. FLAUM, *Circuit Judge*
Hon. MICHAEL S. KANNE, *Circuit Judge*

| | | |
|---|---|---|
| THADDEUS PUDLO,<br>Petitioner-Appellant | ) | Appeal from the United States District Court |
| No. 92-2330 v. | ) | N.D. Ill., E.D. No. 92 C 691 |
| MICHEAL SHEAHAN, Sheriff,<br>Respondent-Appellee | ) | Brian Barnett Duff, Judge |

Upon consideration of the jurisdictional memoranda filed in this matter,

**IT IS ORDERED** that this appeal is **DISMISSED** as premature since there has been no disposition of petitioner-appellant's Rule 59(e) motion in the district court.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

Case Number: 1: 92-cv-00691
Title: Pudlo v. Sheahan
Assigned Judge: Honorable Brian Barnett Duff

MINUTE ORDER of 7/27/93 by Hon. Brian Barnett Duff: For reasons stated in open court 06/01/93, the court finds that this case lacks any debatable questions deserving appellate review. Accordingly, since petitioner has not made a substantial showing of the denial of a federal right, the court denies petitioner a certificate of probable cause to appeal the denial of his habeas corpus petition. See Lozada v. Deeds, 111 S.Ct. 860, 861-862 (1991). Mailed notice.

This order was entered on the docket by the Clerk July 27, 1993

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

Case Number: 1: 92-cv-00691

Title: Pudlo v. Sheahan

MINUTE ORDER of 1/30/92 [Entry date 02/04/92]

Thaddeus Pudlo is in the Cook County Jail because he refused to comply with a state court order to permit city inspectors to inspect the interior premises of a certain piece of property he owned. The court entered an order of civil contempt against Pudlo directing his incarceration in the Cook County Jail until such time as he should purge himself of contempt by arranging for an inspection.

A civil contemnor may challenge his custody in a writ of habeas corpus. See Ridgway v. Baker, 720 F.2d 1409 (5th Cir. 1983). Before coming to federal court, however, the petitioner must exhaust his state remedies. Leonard v. Hammond, 804 F.2d 99, 840 (4th Cir., 1986) In Illinois a civil contemnor may directly appeal the order of contempt, Bone v. Bone, 43 Ill.App.3d 363, 364, 356 N.E. 2d 1348, 1349 (1976); see In re Marriage of Betts, 200 Ill, pp.3d 26, 558 N.E.2d 44 (1980). Pudlo does not allege that he has exhausted his right of review in the state court. Moreover, according to documents attached to the petition, Pudlo has further contempt proceedings scheduled in the trial court. Because Pudlo has yet to exhaust his state court remedies, his petition for federal habeas corpus relief is premature.

Accordingly, the court summarily dismisses the habeas corpus petition without prejudice pursuant to Rule 4 of the Rules Governing Section 2254 Cases.

s/Brian Barnett Duff